

# HOUSE . . . . . No. 759

By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty relative to divorce procedures and judgments in certain Probate Court decisions. The Judiciary.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATING TO EQUITABLE DIVORCE PROCEDURES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 208 of the General Laws is hereby  
2 amended by striking out the third paragraph of Section 1A and  
3 inserting in place thereof the following paragraph:—  
4 If the finding is in the affirmative the court shall approve the  
5 agreement and enter a Judgment of Divorce Nisi.

1 SECTION 2. Section 1B of Chapter 208 of the General Laws is  
2 hereby amended by striking out section 1B and inserting in place  
3 thereof the following section:—

4 Section 1B. Irretrievable breakdown of marriage; commence-  
5 ment of action; waiting period; unaccompanied complaint proce-  
6 dure.

7 An act for divorce on the ground of an irretrievable breakdown  
8 of the marriage may be commenced by the filing of the complaint  
9 unaccompanied by the signed statement and dissolution agreement  
10 the parties require under section 1A.

11 No earlier than thirty days after the filing of the complaint there  
12 shall be a hearing and the court may enter a judgment of divorce  
13 Nisi if the court finds that there has existed, for the period  
14 following the filing of the complaint and up to the date of the  
15 hearing, a continuing irretrievable breakdown of the marriage.

16 Notwithstanding the foregoing, at the election of the court here-  
17 under, the aforesaid thirty day period may be waived to allow the

18 consolidation for the purposes of hearing a complaint commence  
19 under this section with a complaint for divorce commenced by the  
20 opposing party under section 1.

21 The filing of a complaint for divorce under this section shall  
22 not affect the ability of the defendant to obtain a hearing on a  
23 complaint for divorce filed under section 1, even if the aforesaid  
24 thirty day period has not yet expired.

25 Said thirty day period shall be determined from the filing of a  
26 complaint for divorce. In the event that a complaint for divorce is  
27 commenced in accordance with the provisions of section 1A or is  
28 for a cause set forth under section 1, and said complaint is later  
29 amended to set forth the ground established in this section, the  
30 thirty day period herein set forth shall be computed from the date  
31 of the filing of said complaint.

32 As part of the enter of the judgment of divorce Nisi, appropriate  
33 orders shall be made by the court with respect to custody, support  
34 and maintenance of children, and, in accordance with the provi-  
35 sions of section 34, for alimony and for disposition of marital  
36 property.

37 Nothing in the foregoing shall prevent the court, at any time  
38 prior to the judgment, from making temporary orders for custody,  
39 support and maintenance or such other temporary orders it deems  
40 appropriate, including referral of the parties and the children, if  
41 any, for marriage or family counseling. Prior to the entry of judg-  
42 ment under this section, in the event that the parties file the state-  
43 ment and dissolution agreement as required under said section 1A.

1 SECTION 3. Chapter 208 of the General Laws is hereby  
2 amended by striking out section 21 and inserting in place thereof  
3 the following section:—

4 Section 21. Judgments of divorce shall in the first instance be  
5 judgments nisi, and shall become absolute after the expiration of  
6 thirty days from the entry thereof, unless the court within said  
7 period, for sufficient cause, upon application of any party to the  
8 action, otherwise orders. After the entry of a judgment nisi, the  
9 action shall not be dismissed or discontinued on motion of either  
10 party except upon such terms, if any, as the court may order after  
11 notice to the other party and a hearing, unless there has been filed  
12 with the court a memorandum signed by both parties, wherein  
13 they agree to such disposition of the action.